



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**WAGGONER CARR
ATTORNEY GENERAL**

March 31, 1964

Honorable Richard E. Rudeloff
County Attorney
Bee County
Beeville, Texas

Opinion No. C-233

Re: Whether the Commissioners Court of Bee County, Texas is required to appoint a board of managers for a county hospital in Bee County, constructed under the authority of Article 4478, V.C.S., under the stated facts and related questions.

Dear Mr. Rudeloff:

In your letter requesting an opinion from this office, you submit certain facts which we quote as follows:

"Bee County, which has a 1960 Federal census of 23,755, has constructed a county hospital at Beeville under authority given by Article 4478, V.A.T.S. The hospital, its operation and management, was leased by the Commissioners Court of Bee County to the Seventh Day Adventists, as lessee, under authority given by Article 4494L, V.A.T.S. The lease contract in question gives complete management of the hospital to such lessee, and all phases of the operation are specified in such contract.

"Article 4479, V.A.T.S., states, in part, that ' . . . it (the Commissioners Court) shall appoint six (6) resident property tax-paying citizens of the county who shall constitute a board of managers of said hospital.'

"The Commissioners Court of Bee County has not appointed such board of managers and is of the opinion that such board is not

necessary nor desirable and, therefore, does not wish to appoint such board if not required by law."

With regard to these facts you ask the following questions which we quote as follows:

"I. Is the Commissioners Court of Bee County, Texas required to appoint a board of managers for a county hospital in Bee County, constructed under authority given by Article 4478, V.A.T.S., which hospital has been leased by the county to a lessee under contract approved and accepted under provisions of Article 4494L, V.A.T.S.?"

"II. Must a hospital built under provisions of Article 4478, V.A.T.S., be covered by fire and extended coverage insurance, and, if so, may the insurance carrier be either a stock company, a legal reserve company, or a mutual company?"

We will answer your questions in the order in which they are submitted.

Article 4479, Vernon's Civil Statutes, provides in part as follows:

"When the commissioners' court shall have acquired a site for such hospital and shall have awarded contracts for the necessary buildings and improvements thereon it shall appoint six resident property taxpaying citizens of the county who shall constitute a board of managers of said hospital. . . ."

Article 4494L, Vernon's Civil Statutes, provides in part as follows:

"Section 1. Any county in this State having a county hospital which is operated by said county, may, and such county is hereby authorized to lease such hospital, provided the Commissioners Court of said county shall find and determine by an order entered in the minutes of said Court that it is to the best interest of said county to lease such hospital.

The proposed lease of such county hospital shall not be completed until the Commissioners Court of such county shall have complied with the provisions of this Act.

". . .

"Sec. 4. . . . Such Court ~~Commissioners Court~~ shall thereupon be fully authorized and empowered to lease such county hospital to be operated as a hospital by the lessee of same under such terms and conditions as may be satisfactory to the Commissioners Court and the lessee. . . ."

The requirement of Article 4479, Vernon's Civil Statutes, that the Commissioners Court appoint a board of managers for the county hospital created by the authority of Article 4478, Vernon's Civil Statutes, is mandatory as long as the hospital is operated by the county. However, since the Commissioners Court of Bee County by the authority of Article 4494L, Vernon's Civil Statutes, has relinquished the management and operation of the hospital to a lessee under the terms of a lease agreement, it is our opinion that neither the provisions of Article 4494L nor the provisions of the lease agreement imposes any duty upon the Commissioners Court of Bee County to appoint a board of managers for the county hospital during the lease period.

The contractual authority of a Commissioners Court is strictly limited to that conferred by the Constitution and statutes, either expressly or by necessary implication. Hill v. Sterrett, 252 S.W.2d 766 (Tex.Civ.App., 1952, error ref., n.r.e.). It is our opinion that the authority expressed in Article 4478, Vernon's Civil Statutes, for the Commissioners Court of any county to establish a county hospital includes the implied authority to purchase adequate insurance for the protection of the county's investment in hospital facilities. Therefore, it is our opinion that the purchase of the type of insurance in question would be authorized under the authority of Article 4478, Vernon's Civil Statutes, by necessary implication. However, the authority to purchase such insurance does not include the authority to purchase public liability insurance. Attorney General's Opinion WW-112 (1957).

Also the purchase of insurance coverage from a mutual insurance company would not be authorized inasmuch as such purchase would involve the county taking membership in or becoming a stockholder in such corporation, association or

company in violation of Article III, Section 52 of the Texas Constitution. Lewis v. Independent School District of the City of Austin, 139 Tex. 83, 161 S.W.2d 450 (1942), Attorney General's Opinions Nos. 0-924 (1939), WW-986 (1961) and WW-1101 (1961). Therefore, we are of the opinion that the insurance coverage as contemplated here must be purchased by the county from either a stock insurance company or a legal reserve insurance company.

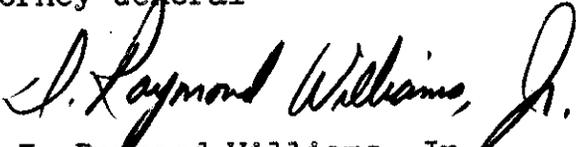
S U M M A R Y

The Commissioners Court of Bee County is not required to appoint a board of managers for a county hospital constructed under the authority of Article 4478, Vernon's Civil Statutes, such hospital being presently leased under the authority of Article 4494L, Vernon's Civil Statutes. The Commissioners Court of Bee County has the authority to purchase fire and extended coverage insurance for the hospital, constructed under the authority of Article 4478, Vernon's Civil Statutes. However, the Commissioners Court is prohibited by the provisions of Article III, Section 52 of the Texas Constitution from purchasing such insurance from a mutual insurance company.

Very truly yours,

WAGGONER CARR
Attorney General

By:


I. Raymond Williams, Jr.
Assistant

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APPROVED:
OPINION COMMITTEE

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APPROVED FOR THE ATTORNEY GENERAL
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